

REMARKS

Claims 1-4 and 10 are amended. Claim 9 was previously canceled. Now pending in the application are claims 1-8 and 10, of which claims 1 and 5 are independent. Claims 5-8 are previously withdrawn. Applicants believe that the following statements address all the ground for rejection and place the pending application in condition for allowance.

I. Interview with the Examiner

Applicants thank the Examiner for the courtesy of extending an interview on October 28, 2008. During the interview, the Examiner indicated that amending claim 1 to recite *a control device programmed to close the discharge valve and operate the fuel pump* appear to define over the art of record. Accordingly, Applicants amend claim 1 as discussed during the interview.

II. Amendments to Claim 1

Claim 1 is amended to recite a control device *programmed to* close the discharge valve and operate the fuel pump upon start up of the fuel cell, as discussed during the telephone interview. Support for this amendment can be found throughout the Specification. Specifically, the present application recites an electric control device (ECU) 26 (Specification, page 8, lines 18-25; Figures 1-3) and the functional features performed by the control device (Specification, page 9, lines 4-7). Based on the description of the structural and functional features of the control device in the Specification, one of ordinary skill in the art would understand that the control device is *programmed to* perform the claimed functions.

III. Rejection of Claims under 35 U.S.C. § 103(a)

Claims 1-4 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent Application Publication No. 2002/0136942 to Kashiwagi (hereafter “Kashiwagi”) in view of Japanese Patent Application Publication No. 2002-33110A to Kobayashi et al. (corresponding to United States Patent No. 6,844,094; hereafter “Kobayashi”).

The control device of the present application simultaneously controls the discharge valve and the fuel (hydrogen) pump upon start up of the fuel cell (the discharge valve is closed and the

fuel pump is operated). The Kobayashi and Kashiwagi references fail to teach or suggest controlling both the valve and the pump upon starting of the fuel cell.

The Kashiwagi reference does not teach or suggest a discharge valve. Hence, for the combination of the Kashiwagi reference and the Kobayashi reference to teach a control device *programmed to close the discharge valve* and operate the fuel pump *upon start up of the fuel cell*, this claim feature should be found in the Kobayashi reference.

The Kobayashi reference teaches a discharge valve but does not teach or suggest that the discharge valve is controlled by the control unit. Specifically, the three-way valve 34 is not connected to the controller. *See* Figure 1. The Kobayashi reference enumerated all the elements controlled by the control unit, i.e. the humidifier 23, the valve 23 for controlling the negative pressure, the suction pump 24 and the valve 25 for controlling a discharge pressure. *See* Col. 7, lines 23-26. All these elements are connected to the control unit, as illustrated in Figure 1. However, the Kobayashi reference neither illustrates nor recites that the discharge valve 34 is controlled by the control unit. In fact, since the three-way valve 34 is a part of the hydrogen supplying apparatus 3, it appears that the three-way valve 34 is pressure controlled. *See* Col. 6, lines 29-64.

Both references fail to teach or suggest *a control device programmed to close the discharge valve upon start up of the fuel cell*. Therefore, the combination of the cited references does not teach or suggest a control device *programmed to close the discharge valve* and operate the fuel pump *upon start up of the fuel cell*, as recited in amended claim 1.

CONCLUSION

In view of the above comments, Applicants believe the pending application is in condition for allowance and urge the Examiner to pass the claims to allowance. Should the Examiner feel that a teleconference would expedite the prosecution of this application, the Examiner is urged to contact the Applicants' attorney at (617) 227-7400.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080, under Order No. SIW-069RCE2. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: November 4, 2008

Respectfully submitted,

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